

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

NO.

76-1139

DONALD SCHANBARGER, Petitioner,

v.

DISTRICT ATTORNEY OF RENSSELAER COUNTY,
DIRECTOR OF DEPARTMENT OF MENTAL HEALTH
OF RENSSELAER COUNTY, SUPERINTENDENT OF
THE NEW YORK STATE POLICE, EDWARD A. VIEL-
KIND and CHARLES P. HASKINS, Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE
SECOND CIRCUIT COURT OF APPEALS OF THE
UNITED STATES

DONALD SCHANBARGER

Petitioner Pro Se

Salem, New York 12865

January 28, 1977

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CITATION

Case:

Carter v Stranton, 405 US 669 14

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DISTRICT ATTORNEY OF RENSSELAER COUNTY,
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The petitioner Donald Schanbarger re-
spectfully prays that a writ of certior-
ari issue to review the judgment and de-

cision of the United States Court of Appeals for the Second Circuit entered in this proceeding on December 30, 1976.

OPINION BELOW

The decision of the Court of Appeals appears in the Appendix pages 1-6 hereto. No opinion was rendered by the District Court for the Northern District of New York.

JURISDICTION

The December 30, 1976 decision and judgment of the Second Circuit Court of Appeals of the United States affirmed; reversed; and remanded in part the order of the United States District Court for Northern New York of May 17, 1976. Assured in the Complaint are 42 USC Section 1983, 28 USC Section 1343 subdivision 3 & 4 and the United States Constitution's Article 3 Section 2, and the 5th,

8th, 9th, 10th & 14th Amendments. Request in Complaint for 3 judge court was denied by district court. Petition is under USC Sec. 1254(1) and filed within 30 days.

STATUTE INVOLVED

Title 42 USC Sec. 1983 in Appendix p 6.

QUESTIONS PRESENTED

in the complaint

(GENERAL Question for all causes) Whether a federal court failing to take judicial notice of the United States Constitution without request, violates the personal rights clause of the 8th, 9th, & 10th Amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th Amendments of the federal Constitution, when every member of the United States judiciary have agreed to support it as a condition of their office as such member?

QUESTION'S PRESENTED 4

(1) Whether the gathering, retention and distribution of information about a person by a government agency thru the action without authority of law of government agents of a state violates the personal rights clause of the 10th amendment and the equal protection, prohibited state conduct, due process clauses of the 14th amendment of the federal Constitution, when no criminal charge prevails?

(2) Whether a district attorney's office in a state that attempts presentation of any case without adequate preparation, or with want of fairness or candor, or obstructs the administration of justice violates the personal rights clause of the 10th amendment and the equal protection, prohibited state conduct, due process clauses of the 14th amendment of the federal Constitution, when a person without

QUESTION'S PRESENTED 5

probable cause follows an arrest and search without probable cause?

(3) Whether a district attorney's office in a state that prosecutes a criminal charge after a state court orders a psychiatric examination connected thereof before trial over such defendants objection violates the personal rights clause of the 10th amendment and the equal protection, prohibited state conduct, due process clauses of the 14th amendment of the federal Constitution, when all criminal defendants are not required to submit to interrogation before trial with its residue injury, and civil commitment of the mentally ill or defective is available?

(4) Whether a department of mental health in a state that conducts a state court ordered psychiatric examination of a

QUESTION'S PRESENTED 6

criminal defendant under a criminal prosecution and supplies such court with a dossier about such defendant, violates the personal rights clause of the 10th amendment and the equal protection, prohibited state conduct, due process clauses of the 14th amendment of the federal Constitution, when all criminal defendants are not required to submit to interrogation before trial with its residue injury, and civil commitment of the mentally ill or defective is available?

(5) Whether the preparation of a criminal complaint or information about a person by a state agent who does not give to such person who could be expected to suffer the intrinsic damages of such prosecution, a bond that such charge is not the outgrowth or connected or results of an arrest or search without probable

QUESTION'S PRESENTED 7

cause and authority of law of a state agent violates the personal rights clause of the 10th amendment and the equal protection, prohibited state conduct, due process clauses of the 14th amendment of the federal Constitution, when the State has no demonstratable way for a person to collect full damages of a criminal prosecution that is the results or follow arrest and/or search without probable cause or authority of law on the part of state agents?

(6) Whether the arrest of a person by a state agent who does not give to such person who will suffer the intrinsic damages of such arrest, a bond that such arrest is/or was not without probable cause and/or the outgrowth or connected or result of action of any state agent without authority of law, violates the per-

QUESTION'S PRESENTED 8

sonal rights clause of the 10th amendment and the equal protection, prohibited state conduct, and due process clauses of the 14th amendment of the federal Constitution, when the State has no demonstrable way for a person to collect full damages of a arrest by a state agent that is the results or follows action of a state agent that is without probable cause and authority of law?

(7) Whether the failure of clerks of a state judiciary to sign papers that are authorized by state law to sign which in effect convey a right that others enjoy as a right without any legal hocus pocus, violates the equal protection, prohibited state conduct, and due process clauses of the 14th amendment of the federal Constitution when a state judiciary clerks fail to sign papers as a function

QUESTION'S PRESENTED 9

and duty of their office when a person has a right under state law for judicial papers that other people obtain like state judicial process without questions subject to question only after issue and service?

(8) Whether the failure of clerks of a state judiciary to post a performance bond with a person they fail to issue process for, violates the equal protection, prohibited state conduct, and due process clauses of the 14th amendment of the federal Constitution when the state judiciary clerks continue in office after failure to sign process as a function and duty of their office they are authorized by state law to issue when a person has a right under state law for judicial process that other people obtain like state judicial process without question sub-

ject to question only after issue and service?

THE ISSUES as cause of action #.

Whether the 10th & 14th Amendments of the federal Constitution requires Federal injunctions against any agency of a states and subdivisions from:

(1) Gathering, retention and distribution of information obtained thru violations of the federal Constitution by government agents.

(2) Public prosecutors presentation of a criminal prosecution without posting bond.

(3) Prosecution of a criminal defendant that was ordered to have a psychiatric examination before trial.

(4) Department of mental health from giving a criminal court a dossier about a criminal defendant before trial.

(5) Starting a criminal action against anyone without posting bond.

(6) Arresting anyone without posting bond.

Whether the 14th Amendments of the federal Constitution requires state court clerks:

(7) To pay damages for failure to preform official acts required by law.

(8) To post bonds for failure to perform official acts required by law.

STATEMENT OF THE CASE

The petitioner was arrested by state police for failure to answer questions in 1968 and prosecuted therefore by the office of the Rensselaer County District Attorney. During the prosecution he was interrogated by the Rensselaer County Department of Mental Health under the implied threat of being placed in a men-

tal hospital for observation. He was convicted as charged for loitering, which in the end was reversed and dismissed by the New York State Court of Appeals in 1969. For his damage he obtained a \$5,000 state court judgment against a state trooper. He asked the U. S. Supreme Court for Certiorari on ground it did not cover damages, which was denied in 1975. He asked court clerks for an Information Subpoena and Restraining Notice for judgment enforcement in 1975, which were denied. He brought on a judgment enforcement court motion, which was denied, but reversed and remanded on appeal. The State claims it would pay the judgment docketed in 1973. The petitioner questions the legality of State direct payment.

The petitioner was arrested by state

police in 1974 which resulted in prosecution that in appeal failed. The remedies of the 1974 assault are expect to be govern by the doctrine of waste as the 1968 one.

The complaint of this case is grounded to the 1968 arrest with the damages that resulted therefrom. The defendants moved to have the complaint dismissed before answer over the objections of the plaintiff in District Court. District Court dismissed the complaint in open court without opinion on May 17, 1976. On December 30, 1976 the U.S. Court of Appeals affirmed the dismissal of the complaint with the exception to the portion relating to the return or expungement of records relating to the plaintiff. The framed 9 questions, pages 3 thru 10 herein, are contained in the

complaint with cause of action numbered.

REASONS TO GRANT WRIT

1. To establish actual remedy to collect full willful damages from government agents thru ethics of responsibility.

2. To re-enforce CARTER v STRANTON, 405 US 669, that one need not exhaust State remedies for Federal judicial relief.

3. To show comity code is to protect.

CONCLUSION

For these reason, a writ of certiorary should issue to review the order and with the opinion so held, to the Second Circuit Court of Appeals of the United States.

Submitted,

DONALD SCHANBARGER

Petitioner Pro Se

January 28, 1977

DECISION

App. 1.

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 252—September Term, 1976.

(Submitted November 23, 1976

Decided December 30, 1976.)

Docket No. 76-7288

Donald Schanbarger,

Plaintiff-Appellant,

v.

District Attorney of Rensselaer County,
Director of Department of Mental Health
of Rensselaer County, Superintendent of
the New York State Police, Edward A.
Vielkind and Charles P. Haskins,

Defendants-Appellees.

B e f o r e :

Mansfield, Van Graafeiland
and Meskill,

Circuit Judges.

DECISION App. 2.

Appeal from a judgment of the United States District Court for the Northern District of New York, James T. Foley, Chief Judge, dismissing plaintiff's complaint under F.R.Civ.P 12(b)(6) for failure to state a claim on which relief can be granted.

Affirmed in part and reversed and remanded in part.

Donald Schanbarger, Salem, N.Y.,

Appellant, Pro Se

Marvin I. Honig, Troy, N.Y. (David

R. Dudley, Troy, N.Y., of Coun-

sel), for Defendants-Appellees

District Attorney of Rensselaer

County, Director of Department

of Mental Health of Rensselaer

County, Edward A. Vielkind and

Charles P. Haskins.

Louis J. Lefkowitz, Attorney General

DECISION App. 3.

of the State of New York (Ruth Kessler Toch, Solicitor General, Peter J. Dooley, Asst. Attorney General, of Counsel), for Defendant-Appellee Superintendent of the New York State Police.

Per Curiam:

The judgment appealed from is the latest development in a running series of legal controversies between the pro se plaintiff and the New York Police authorities, which began with his unlawful arrest for loitering in 1968. His present complaint in the United States District Court for the Northern District of New York was dismissed under F.R.Civ.P. 12(b)(6) for failure to state a claim on which relief could be granted.

The complaint seeks various forms of injunctive relief against the named state

DECISION App. 4.

and county officials, requiring the posting of bonds before any arrest or prosecution; prohibiting court ordered psychiatric examination of criminal defendants and the prosecution of defendants who have had such examinations, and prohibiting the collecting of information about anyone who has been acquitted of a criminal charge. Appellant also seeks damages and injunctive relief against two Supreme Court clerks because of their failure to sign a so-called "Information Subpoena and Restraining Notice" in connection with a verdict in his favor which has never been reduced to judgment. Dismissal of these causes of action was clearly in order. If this pro se complaint is read liberally, it appears, however, to seek the return or expungement of records relating to ap-

DECISION App. 5.

pellant's arrests and prosecution. It may be that there are records in the possession of the official defendants relating to appellant's unlawful arrests which should be expunged and that federal relief is required to accomplish this result. See *Sullivan v. Murphy*, 478 F. 2d 938 (D.C. Cir.), cert. denied, 414 U. S. 880 (1973); *Billick v. Dudley*, 356 F. Supp. 945 (S.D.N.Y. 1973). We think this matter should be more fully explored by the District Court before a determination is made concerning plaintiff's relief.

We therefore affirm the judgment and order appealed from in all respects save that portion relating to the return or expungement of certain records relating to appellant and, as to that portion, we reverse and remand to the District Court for further proceedings consistent

App. 6.

with this opinion. No costs of appeal shall be allowed to any party.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory, subjects or cause to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitutional laws, shall be liable to the parties injured in an action at law, suit and equity, or other proper proceeding for redress.